

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-2130

To be argued by  
EDWARD M. CHIKOFSKY

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-2130

JOE STEVENSON SADDLER,

Appellant,

-against-

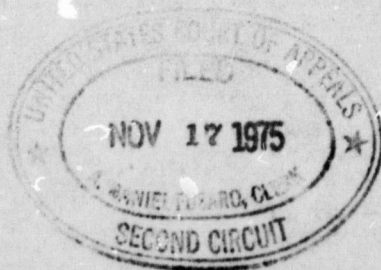
UNITED STATES OF AMERICA

Respondent.

Appeal from the United States District  
Court for the Eastern District of New York

APPENDIX

EDWARD M. CHIKOFSKY  
Attorney for Appellant  
300 Park Avenue  
New York, N. Y. 10022  
(212) 593-9000



APPENDIX

TABLE OF EXHIBITS

- 1 - Docket sheets, 74 C 524 (E.D.N.Y.)
- 2 - Docket sheets, 72 Cr. 718 (E.D.N.Y.)\*
- 3 - Memorandum and order, 74 C 524 (E.D.N.Y. December 20, 1974)
- 4 - Transcript of Plea Minutes, 72 Cr. 718, December 14, 1972
- 5 - Transcript of Sentence Minutes, 72 Cr. 718, February 16, 1973
- 6 - Appellant's pro se 2255 petition, filed April 3, 1974
- 7 - Assigned Counsel's Memorandum in Support of Petition,  
filed June 21, 1974
- 8 - Government's Notice of Motion for Psychiatric Examination,  
filed August 5, 1974
- 9 - Counsel's Affidavit in Opposition to Government's Motion,  
filed August 19, 1974
- 10 - Appellant's Affidavit in Opposition to Government's Motion,  
filed August 22, 1974
- 11 - Government's Memorandum of Law in Opposition, filed  
September 25, 1974

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\* not part of the official certified record on appeal, but included herein for the convenience of the Court.





**TITLE OF CASE**

JOE STEVENSON SADDLER

vs.

UNITED STATES OF AMERICA

**ATTORNEYS**

**For Plaintiff:**

Joe Stevenson Sads

P.M.B. Pro Se

~~75854-158~~

Atlanta, Georgia 303

(Appointed by the Co

For Defendant: David Black

401 Bway., N.Y., N.Y

Tel: 226-6684

For Defendant:

BASIS OF ACTION: PURSUANT TO SEC. 855  
(Related Case 72-CR-718)

## JURY TRIAL CLAIMED

ON

[illegible]

### ABSTRACT OF COSTS

[illegible]

## RECEIPTS, REMARKS, ETC.

A



524

## JOE STEVENSON SADDLER vs. U.S.A.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
4-3-74	MOTION FILED TO VACATE SENTENCE (Re: 72-CR-718)	1 JSS
4-3-74	Copy of letter of Clerk of Court filed dated 4-3-74 acknowledging application, etc.	2
4-30-74	Copy 4 (Voucher - Appointment) mailed to Administrative Office, Chief Auditor, Administrative Office of the U.S. Courts, Supreme Court Bldg., Washington, D.C. 20544. <i>JWS</i>	3
4-21-74	MEMORANDUM FILED IN SUPPORT OF PETITION.	3
8/5/74	Notice of motion & ret 9/10/74 for an order directing examination by Fed Pen. Board of Examiners filed	4
8-19-74	Affidavit of David Blackstone, filed in opposition.	5
12-22-74	Affidavit of Joe Stevenson Saddler, petitioner, filed in opposition, etc.	6
1-10-74	Before COSTANTINO, J. Case called- Motion adjourned to Sept. 25, 1974 at 10:00 A.M.	
1-25-74	Before COSTANTINO, J. Motion argued. DECISION RESERVED. Petitioner to file answering papers by Oct. 8, 1974.	
1-25-74	Government's Memorandum of Law filed in opposition.	7
2-20-74	BY COSTANTINO, J. MEMORANDUM and ORDER FILED. MOTION TO VACATE the judgment is DENIED. (See Memo., etc.)	8 JSC
2-27-74	NOTICE OF APPEAL FILED.	9
2-31-74	Copy of Notice of Appeal was on this day mailed to Clerk, U.S.C.A. <i>JWS</i>	
2-31-74	Instructions on preparation of record on appeal, together with forms C and D were on this day mailed to David Blackstone, Esq., 401 Bway., N.Y., N.Y. 10013 <i>JWS</i>	
2-31-74	Copy of Notice of Appeal was on this day mailed to Joe Stevenson Sadler Box PMB, Atlanta, Georgia 30315 <i>JWS</i>	
2-31-74	Copy of Notice of Appeal was on this day mailed to U.S. Atty., etc. <i>JWS</i>	
1-6-75	Copy 2 filed (Voucher fees, etc.) filed - approved for \$250.00 Letter attached to Copy 2	10
1-6-75	Copy 3 mailed to David Blackstone, Esq., 401 Broadway, Room 1001 New York, N.Y. 10013 <i>JWS</i>	
1-6-75	Copy 1 mailed to Administrative Office, etc. <i>JWS</i> (with copy of letter of David Blackston, Esq., re fees)	

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**CLOSED**

COSTANTINO.

TITLE OF CASE	ATTORNEYS
TITLE OF CASE	XXXXXX For JOE ROBERT LOUIS F. ROSENTHAL
X JOE STEVENSON, SADDLER,	16 Court Street, Bklyn
X ROBERT LEE BIGGS a/k/a "Bobby",	(212-855-2600)
X JOHN DOE also known as ROBERT TRIGGS,	
also known as Raymond Matthews,	
also known as Billy W. Matthews,	For Defendant: BIGGS:
also known as Billy Wyane Matthews,	Court assigned counsel
also known as Tex, and	Seymour Adams
(First name unknown) X WILLIAMS,	15 Beach St.
also known as Will	Staten Island, N.Y. 10314
Bank robbery.	447-3742

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISE
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
6-20-72	Before ROSLING, J. - Indictment filed.
6-29-72	File 72 M 1250 inserted into criminal file.
7-11-72	Before COSTANTINO, J. Case called. Deft SADDLER & counsel M. Seltzer Legal Aid present. Deft arraigned & enters a plea of not guilty. Ba continued at \$100,000.00. -Defts ROBERT L. BIGGS & WILLIAMS not prese Bench warrants ordered.
8-10-72	Government's notice of readiness for trial filed.
8-11-72	Bench warrants issued.
8-28-72	Magistrates papers re deft ROBERT LEE BIGGS received from the U.S. District Court, Eastern District of N.C., New Bern, N.C. and inserted in criminal folder.
9-25-72	Before Costantino J - Case called - Deft BIGGS present without counsel - deft arraigned and court enters a plea of not guilty

600 610

DATE	PROCEEDINGS
	on his behalf - bail set at \$75,000.
0-19-72	By Costantino J - Order appointing counsel filed (BIGGS)
10-19-72	Before Costantino J - Case called - Defts present with counsel - trial adjd to Oct. 26, 1972 at 10:00 am.
10-26-72	Before COSTANTINO J - Case called - Defts present with counsel - Trial adjd to Nov. 20, 1972.
1-16-72	Magistrates proceedings re debt Biggs filed received from U.S. District Court, Eastern District of North Carolina., Raleigh, N.C.
1-20-72	Before COSTANTINO J - Case called - Defts & attys present - debt ROBERT TRIGGS arraigned and enters a plea of not guilty - bail set at \$50,000 motion to suppress adjd to Dec. 1, 1972 - Trial adjd to 12-4-72. (ROBERT TRIGGS is the same/as indicated in caption as JOHN DOE)
2-1-72	Before COSTANTINO, J.-Case called-Defts and attys present -Hearing Ordered as Begun-Hearing cont'd to 12-4-72 at 12 Noon.
2/4/72	Before COSTANTINO, J.- Case called- Defts and attys present-Motion to suppress adjd to 12/3/72 at 10:00 A.M. (for defts JOE STEVENSON, SADDLER, ROBERT LEE BIGGS, AND ROBERT TRIGGS)
/8/72	Before COSTANTINO, J.- Case called-Deft SADDLER, BIGGS AND TRIGGS present. Counsel present- Hearing resumed- Cont'd to 12/11/72 at 10:00 A.M.
/11/72	By COSTANTINO, J. - Order appointing counsel filed. (for debt ROBERT TRIGGS)
2/11/72	Before COSTANTINO, J.- Case called- Defts SADDLER, R. BIGGS, AND R. TRIGGS and attys present- Hearing cont'd to 12/12/72 at 10:00 A.M.
2-12-72	By Costantino J - Order appointing counsel filed (BIGGS)
12-12-72	Before Costantino J - Case called - defts SADDLER, BIGGS & TRIGGS present counsels present - Hearing resumed - Hearing continued to 12-13-72 at 10:30 am.
1-13-72	Before Costantino J - Case called - Defts present with counsels - Hearing resumed - Hearing concluded - Motion to suppress argued and denied - selection of Jury continued to Dec. 14, 1972 at 10:00 am.
12-14-72	Before COSTANTINO J - Case called - Defts present with attys. Hearing resumed - Selection of Jurors continued - debt TRIGGS withdraws his plea of not guilty and after being advised of his rights by the court and on his own behalf enters a plea of guilty to count 2-sentence adjd without date - debt BIGGS & SADDLER withdraw their pleas of not guilty and after being advised of their rights by the court and each on his own behalf enter a plea of guilty to count 1 - sentences adjd without date as to all 3 defts.
12/15/72	Stenographer's transcript of 12/14/72 filed.



DA:

## PROCEEDINGS

2/16/73	Before COSTANTINO, J. - Case called- Deft and atty Mr. Kelly of Legal Aid Society present -Deft sentenced to imprisonment on ct. for 12 years pursuant to T-18,U.S.C., Sec. 4208(a)(2)-On motion of AUSA DePetris counts 2 and 3 are dismissed. <i>SADDLER</i>
2/16/73	By COSTANTINO, J. - Judgment and Commitment filed. Copies to Marsh
2/16/73	Before COSTANTINO, J. - Case called- Deft ROBERT LEE BIGGS and atty Mr. Adams present- Deft sentenced to imprisonment on count 1 for a period of 12 years pursuant to T-18,U.S.C., Sec. 4208(a)(2)-On motion of AUSA De Petris counts 2 and 3 are dismissed
2/16/73	By COSTANTINO, J. - Judgment and Commitment filed. Copies to Marsha
2/16/73	Before COSTANTINO, J. - Case called- Deft ROBERT TRIGGS and coun present- Deft sentenced to imprisonment on count 2 for a period of 15 years pursuant to T-18,U.S.C., Sec. 4208(a)(2). On motion of AUSA De Petris counts 1 and 3 are dismissed.
2/16/73	By COSTANTINO, J. - Judgment and Commitment filed.-Copies to Marsh
2/20/73	Certified copy of Judgment and Commitment ret'd and filed/Execute Defts delivered to Fed. Det. Hdqs. (DEFTS TRIGGS, SADDLER AND BIG
2/21/73	Voucher for compensation filed (for attyX LOUIS R. ROSENTHAL)
2-22-73	Voucher for compensation filed (deft ROBERT LEE BIGGS)
4/6/73	By COSTANTINO, J. - Memorandum and Order filed, that the deft Biggs motion for red. of sentence is denied.
4-23-73	Stenographers transcript dated Dec. 13, 1972 filed.
5/1/73	Letter dated 3/23/73 filed from J. SADDLER to J. COSTANTINO re: red. of sentence.
5/18/73	By COSTANTINO, J. - Memorandum and Order filed, that the deft J. S motion for reduction of sentence is denied.
6-8-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed (TAYLOR)
6-8-73	By Costantino J - Writ Issued, ret. June 28, 1973 (TAYLOR)
6/13/73	Notice of Motion filed, re: reduction of sentence (JOE SADDLER)
6/26/73	By COSTANTINO, J. - Memorandum and Order filed, denying deft SADDLER motion for reduction of sentence
6/28/73	Writ ret'd and filed. Executed.
9-14-73	Before Costantino J - Case called - On motion of Asst U.S. Atty Dertinger the Indictment is dismissed as to deft WILLIAMS (no first given)
9-14-74	By Costantino J - Order of dismissal filed (WILLIAMS)
1-30-74	Stenographers Transcript dated Feb. 16, 1973 filed (Saddler)

DATE

PROCEEDINGS

- 14-74 Notice of Motion filed (deft Biggs) under Rule 35 for reduction of sentence imposed.
- 24-74 By COSTANTINO J - Memorandum and Order filed denying motion for reduction of sentence imposed as to deft Biggs. (More than 120 days have passed since sentence date etc)
- 26-74 Letter from deft Robert Diggs to chambers filed re: Rule 35 motion
- 0/15/74 Stenographers Transcript dated 2/6/74 filed
- 25-75 Rule 35 motion for reduction of sentence imposed (deft SADDLER)
- 23-75 By COSTANTINO J - Memorandum and Order filed denying motion for reduction of sentence (Saddler)
- 9-16-75 Notice of Motion filed, for reduction of sentence imposed ~~under~~ under Rule 35 (deft Biggs) forwarded to Chambers.
- 23-75 By COSTANTINO J - Memorandum and Order filed denying motion of deft BIGGS for reduction of sentence imposed on 2-16-73. Since more than 120 days have elapsed since sentencing, the petition is untimely, and accordingly denied.



Exhibit 3

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JOE STEVENSON SADDLER

:

74-C-524

:

v.

:

MEMORANDUM and ORDER

UNITED STATES OF AMERICA

:

-----X

DEC 20 1974

A p p e a r a n c e s :

David Blackstone, 335 Broadway, New York City 10013, for  
petitioner

David G. Trager, United States Attorney, E.D.N.Y., by  
Alvin A. Schall, Ass't United States Attorney, for  
respondent

COSTANTINO, D.J.

On December 14, 1972 after a pre-trial suppression hearing and the selection of a jury, petitioner and his two codefendants pleaded guilty to one count of an indictment charging them with bank robbery. Petitioner was sentenced on February 16, 1973 to a term of imprisonment of twelve years. He now moves pursuant to 28 U.S.C. § 2255 to vacate the judgment of conviction and for leave to plead anew. As grounds, petitioner alleges that the plea was not "made voluntarily with [an] understanding of the nature of the



charge and the consequences of the plea." Rule 11, Fed.R.Crim.P. Specifically, petitioner contends that the issue of his mental competency was before the court at the time of his plea and therefore the court should not have accepted the plea. The United States maintains that since the Rule 11 inquiries were properly made and the court was persuaded that the plea was voluntary, the motion should be denied. In addition the United States requests that an examination to determine the petitioner's mental competency be had to aid the court in its decision.

The Supreme Court held in McCarthy v. United States, 394 U.S. 459 (1969), that Rule 11 compliance must be judged by examining the minutes of the plea itself. Moreover, a retroactive determination of competency is at best unreliable and inconclusive. Dusky v. United States, 362 U.S. 402 (1960); Pate v. Robinson, 383 U.S. 375 (1966). Accordingly, the United States' request for a psychiatric examination of petitioner is denied.

It is clear from a reading of the minutes of the plea that the appropriate Rule 11 inquiries were made. The court personally addressed petitioner and determined that

the plea was made knowingly and voluntarily and that a factual basis for the plea existed. The sole basis for this motion is that the court was informed by petitioner's counsel after the plea was accepted of a potential psychiatric problem and that under those circumstances, petitioner maintains, the court should not have accepted the plea.

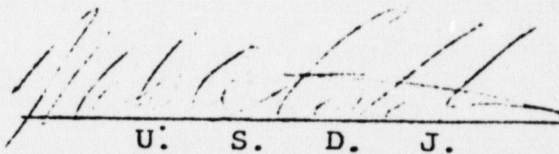
After the plea was accepted by the court Mr. David McCarthy, petitioner's trial counsel, requested that an examination into petitioner's psychiatric and physical condition be had to "aid [in] the sentencing procedure." Minutes of December 14, 1972, p. 390. The court agreed but, inexplicably, no examination was ever conducted. Petitioner's mental condition was raised again on the date of sentencing, February 16, 1973, by petitioner's new counsel, Mr. Edward Kelly, who due to petitioner's apparently "incoherent" condition, requested a study and commitment pursuant to 18 U.S.C. § 4208(b). At that time the court denied the request.

The question before the court at this time is whether there was "reasonable cause" for the court to



believe that petitioner was incompetent at the time of the plea. 18 U.S.C. § 4244. The court had been apprised of petitioner's narcotics background by his counsel and had agreed to order an examination for narcotic and psychiatric reasons to aid in sentencing. But petitioner's counsel himself apparently did not believe that petitioner was incompetent to plea. That opinion is significant. See United States ex rel. Roth v. Zelker, 455 F.2d 1105, 1108 (2d Cir. 1972), cert. denied, 408 U.S. 927 (1972). Moreover, and most important, the court had observed petitioner throughout the suppression hearing. During petitioner's testimony, both on direct and cross-examination, he answered questions clearly and coherently. Finally, the Rule 11 answers establish that petitioner understood the proceedings and was fully in control of his actions. No reasonable ground to believe that petitioner was incompetent at the time of the plea exists. See also United States v. Vowteras, 500 F.2d 1210 (2d Cir. 1974).

Accordingly, the motion to vacate the judgment is denied.

  
U. S. D. J.

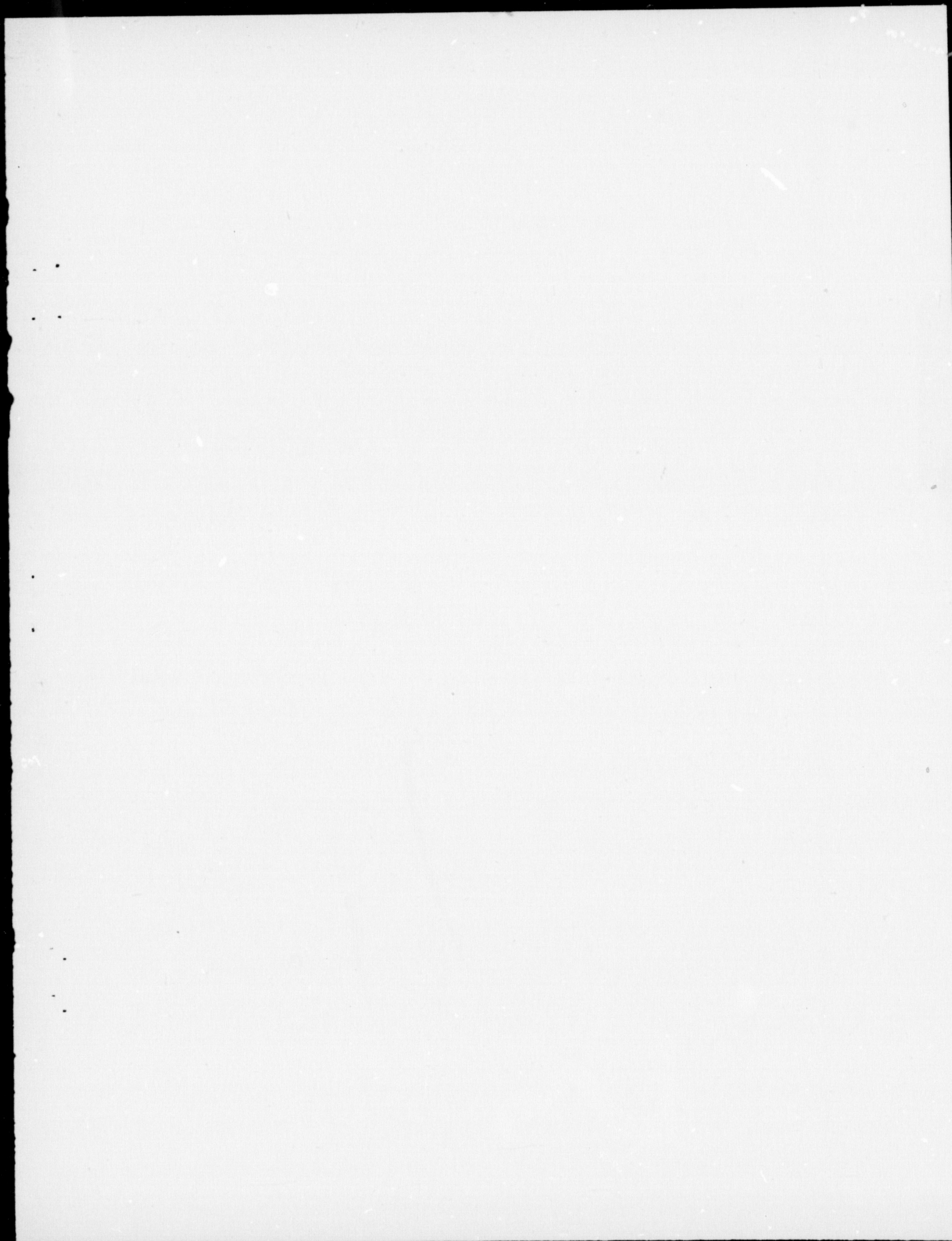




Exhibit 4

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

361  
FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT  
★ DEC 15 1972  
TIME AM  
P.M.

UNITED STATES OF AMERICA,

-against-

JOE STEVENSON SADDLER, ROBERT  
LEE BIGGS and ROBERT TRIGGS,

Defendant.

72-CR-718

United States Courthouse  
December 14, 1972

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

I hereby certify that the foregoing is  
a true and complete transcript of the  
proceedings in this case.

*Winifred D. Lewis*  
Official Court Reporter  
U.S. District Court

WINIFRED D. LEWIS  
OFFICIAL COURT REPORTER

## Appearances:

ROBERT A. MORSE, ESQ.,  
United States Attorney for the  
Eastern District of New York

BY: RONALD DePETRIS, ESQ.,  
Assistant United States Attorney

DAVID MCCARTHY, ESQ.  
Legal Aid Society  
Attorney for defendant Sandler

S. ADAMS, ESQ.,  
Attorney for defendant Biggs

LOUIS ROSENTHAL, ESQ.,  
Attorney for defendant Triggs



1  
2 THE COURT: Absolutely, all in reference  
3 to the questions that I had asked.

4 MR. MC CARTHY: Judge, also with respect  
5 to Mr. Saddler at this time he would respectfully  
6 seek leave of the Court to withdraw his pre-  
7 viously entered plea of not guilty to all  
8 three counts of the indictment and at this  
9 time the defendant offers to plead guilty to  
10 count one of the indictment charging him  
11 with bank robbery.

12 THE COURT: All right. Now Mr. Saddler,  
13 you have been in this Court the past few days,  
14 right?

15 DEFENDANT SADDLER: Yes, sir.

16 THE COURT: And you have also while  
17 in Court have witnessed the selection of a Jury  
18 in your behalf.

19 DEFENDANT SADDLER: Yes, sir.

20 THE COURT: Right? Now your lawyer  
21 now advises that you withdraw your plea of  
22 not guilty to count one and that you're pleading  
23 guilty to count one, is that right?

24 MR. MC CARTHY: Yes, Judge.

25 THE COURT: You're pleading guilty to it,

5 1  
2 to count one?

3 DEFENDANT SADDLER: Yes.

4 THE COURT: Right?

5 DEFENDANT SADDLER: Yes, sir.

6 THE COURT: And that count one involves  
7 the violation of the United States Code Title  
8 182113A, which is a crime under the law. Do  
9 you understand that?

10 DEFENDANT SADDLER: Yes, sir.

11 THE COURT: And that you are pleading  
12 to a felony, which is a crime under the law.

13 DEFENDANT SADDLER: Yes, sir.

14 THE COURT: In violation of the United  
15 States laws. Now, in any event you know,  
16 do you not, that you had a right and absolute  
17 right to a Jury trial?

18 DEFENDANT SADDLER: Yes, sir.

19 THE COURT: You witnesses that, didn't  
20 you?

21 DEFENDANT SADDLER: Yes, sir.

22 THE COURT: And you had an absolute  
23 right to stand mute and not say a word, not  
24 one word, during that jury trial and no  
25 presumption could be found against you of



6  
1  
2 guilt, right?

3 DEFENDANT SADDLER: Yes, sir.

4 THE COURT: During the trial you understood  
5 that and you heard the Judge tell the Jury that  
6 you are presumed innocent?

7 DEFENDANT SADDLER: Yes, sir.

8 THE COURT: Until the very, very ultimate  
9 end of the trial, is that true?

10 DEFENDANT SADDLER: Yes, sir.

11 THE COURT: And you understood that,  
12 didn't you?

13 DEFENDANT SADDLER: Yes, sir.

14 THE COURT: And do you understand like-  
15 wise that you had a right to have every witness  
16 that knew something about this case and that  
17 the burden was on the Government to prove it  
18 against you, that you were the guilty part in  
19 the case, yes, sir?

20 DEFENDANT SADDLER: Yes, sir.

21 THE COURT: You understand that?

22 DEFENDANT SADDLER: Yes, sir.

23 THE COURT: Those are Constitutional  
24 rights given to you. Do you waive those  
25 rights?

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DEFENDANT SADDLER: Yes, sir.

THE COURT: You waive them? Now, do you know full well that you are waiving your Constitutional rights?

DEFENDANT SADDLER: Yes, sir.

THE COURT: There is no doubt in your mind that you would have an absolute right to a Jury trial, is there?

DEFENDANT SADDLER: No, sir.

THE COURT: There is no doubt in your mind that this case would have proceeded with the witnesses proceeding against you and testifying -- right?

DEFENDANT SADDLER: Right.

THE COURT: And there is no doubt in your mind that you could have stood in that chair and talked to your lawyer, been represented and not say one word.

DEFENDANT SADDLER: Yes, sir.

THE COURT: Right? And knowing that, you waive your Constitutional rights that have been afforded to you?

DEFENDANT SADDLER: Yes, right.

THE COURT: Is that right?



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2  
3 DEFENDANT SADDLER: Right.

4 THE COURT: Now, I want you to tell --  
5 first of all, has anyone promised you, forced  
6 you, coerced you, or in any way whatsoever  
7 made you take a plea in this case or are you  
8 doing it of your own free will and voluntarily?

9 DEFENDANT SADDLER: Own free will.

10 THE COURT: And voluntarily?

11 DEFENDANT SADDLER: Voluntarily.

12 THE COURT: Has anyone made any promise  
13 to you whatsoever, any promises either your  
14 own lawyer or anybody else to take a plea  
15 in this case?

16 DEFENDANT SADDLER: No, sir.

17 THE COURT: All right, now you must tell  
18 me in your own words what you say you did  
19 wrong?

20 DEFENDANT SADDLER: What I say I did  
21 wrong?

22 THE COURT: Yes. In your own words.

23 DEFENDANT SADDLER: What I did wrong?

24 THE COURT: Yes, according to count  
25 one. You're pleading to a crime.

DEFENDANT SADDLER: Well, I went in there --

1  
2 THE COURT: Where did you go?

3 DEFENDANT SADDLER: Manufacturer's Hanover  
4 Trust.

5 THE COURT: Where?

6 DEFENDANT SADDLER: I don't know.

7 THE COURT: What street, what street?

8 DEFENDANT SADDLER: I don't know.

9 THE COURT: You have been sitting  
10 here, you have heard the bank name and the  
11 bank --

12 DEFENDANT SADDLER: Broadway.

13 THE COURT: Broadway and what county?

14 DEFENDANT SADDLER: Brooklyn.

15 THE COURT: In Brooklyn. And what date,  
16 do you remember the date or the month that  
17 you went there?

18 DEFENDANT SADDLER: June.

19 THE COURT: In June?

20 DEFENDANT SADDLER: Yes.

21 THE COURT: And did you go there alone?

22 DEFENDANT SADDLER: No, sir.

23 THE COURT: You didn't go alone. Did  
24 you go with somebody else?

25 DEFENDANT SADDLER: Yes, two other guys.



10

1  
2 THE COURT: Now, did you go into this bank  
3 -- at the time you went into the bank, did  
4 you go in there knowing that you were going  
5 to violate the law?

6 DEFENDANT SADDLER: Yes, sir.

7 THE COURT: All right, and did you have  
8 a weapon with you?

9 DEFENDANT SADDLER: Yes, sir.

10 THE COURT: All right, now do you know --

11 MR. DE PETRIS: What was the weapon?

12 THE COURT: What kind of weapon did  
13 you have, sir?

14 DEFENDANT SADDLER: 22 caliber revolver.

15 THE COURT: 22 caliber revolver.

16 All right, now --

17 MR. DE PETRIS: This is the defendant,  
18 your Honor, who actually grabbed the money  
19 under the cash drawers.

20 THE COURT: Well, you knew what you had  
21 taken didn't belong to you?

22 DEFENDANT SADDLER: Yes, sir.

23 THE COURT: And that it belonged to  
24 the bank itself?

25 DEFENDANT SADDLER: Yes, sir.

1  
2 MR. MC CARTHY: Yes, Judge, I would  
3 just for the record note that the defendant  
4 is not pleading guilty to the D count.

5 THE COURT: A count.

6 MR. MC CARTHY: Just making it clear  
7 for the record.

8 THE COURT: Well, I will tell him --  
9 that will be clear as soon as I tell him  
10 what he can be sentenced to.

11 Now, do you understand that under the  
12 law that you can be sentenced to a maximum of  
13 \$5,000 and/or twenty years in jail or both?

14 THE DEFENDANT SADDLER: Yes, sir.

15 THE COURT: You understand that? Do  
16 you understand that the meting out of the  
17 sentence is subject to numerous items, one  
18 of which is a probation report on your back-  
19 ground, do you understand that?

20 DEFENDANT SADDLER: Yes, sir.

21 THE COURT: And do you understand  
22 likewise that this Court makes absolutely  
23 no promise to you because you pleaded guilty  
24 of any nature whatsoever, do you understand  
25 that?



1  
2 DEFENDANT SADDLER: Yes, sir.

3 THE COURT: Nor has anyone any right to  
4 make a promise on behalf of this Court, understand  
5 that?

6 DEFENDANT SADDLER: Yes, sir.

7 MR. DE PETRIS: Has your Honor found --  
8 does your Honor find there was a factual basis  
9 for the plea and it is being made voluntarily  
10 understanding the nature and the consequences  
11 of the plea?

12 THE COURT: I found there was a factual  
13 basis and it was voluntary and willfully  
14 made.

15 MR. DE PETRIS: And the consequences  
16 of the plea?

17 THE COURT: And the consequences of the  
18 plea and the nature of the plea and the Court  
19 accepts his plea.

20 MR. DE PETRIS: Your Honor, I believe  
21 Mr. Saddler wishes to take the stand, take  
22 the oath and make a statement for the record.

23 MR. MC CARTHY: I would like to make  
24 clear that's going to happen. Mr. Saddler --  
25 I have spoken to Mr. Saddler about the matter

1  
2 of the alleged beating that was perpetrated,  
3 allegedly perpetrated by the FBI agent.

4 Mr. Saddler has agreed to withdraw that  
5 accusation and that's all he's going to say.  
6 Is that okay with your Honor?

7 THE COURT: You can swear him -- he's  
8 been sworn, you have been previously sworn,  
9 is that right, you swore yesterday.

10 DEFENDANT SADDLER: Yes, sir.

11 THE COURT: So I'll take you as a man  
12 and permit that swearing to stand, all right?

13 DEFENDANT SADDLER: Yes, sir.

14 THE COURT: Okay, you're sure now?

15 DEFENDANT SADDLER: Yes, sir.

16 THE COURT: All right, he's been previously  
17 sworn. Having been previously sworn in the  
18 case, now place on the record the statement  
19 that you wish to place.

20 DEFENDANT SADDLER: Place on --

21 THE COURT: Place on the record --

22 MR. MC CARTHY: Perhaps I can --

23 THE COURT: Ask the question.

24 BY MR. MC CARTHY:

25 Q The question, Mr. Saddler, is this, are you



1  
2 agreeing to volunteer and of your own free will willing to  
3 withdraw the accusation concerning Agent Janson that  
4 you were beaten? Do you understand what I am saying?

5 A Yes.

6 Q Are you willing to withdraw that accusation?

7 THE COURT: That's the accusation that  
8 he beat you.

9 DEFENDANT SADDLER: Yes, sir.

10 MR. DE PETRIS: Do you now withdraw  
11 it? And do you now withdraw it?

12 MR. MC CARTHY: In other words, are  
13 you doing it now?

14 DEFENDANT SADDLER: Yes.

15 THE COURT: You withdraw it now, that  
16 accusation?

17 DEFENDANT SADDLER: Right.

18 THE COURT: Is that right?

19 DEFENDANT SADDLER: Right.

20 THE COURT: The Court accepts the plea.

21 MR. MC CARTHY: Thank you, Judge.

22 One further thing: In aid of sentence,  
23 your Honor, I would request, and in view of  
24 the nature of the charge, the defendant's  
25 drug background, I would ask that your Honor

1  
2 consider providing for a 4244 examination,  
3 your Honor.

4 THE COURT: Yes, a narcotic appraisal, --

5 MR. MC CARTHY: Both narcotic and  
6 psychiatric, just so that we can have a very  
7 clear record when the defendant is sentenced  
8 and also I think it would be in aid of the  
9 sentencing procedure.

10 THE COURT: I have no objection to it.  
11 It's one of the reasons why we have the section,  
12 so I will permit that.

13 MR. MC CARTHY: Thank you very much,  
14 your Honor.

15 THE COURT: You must order it, and so on.

16 MR. MC CARTHY: I will draw up the order.

17 THE COURT: I have no objection to it.  
18 I will permit it.

19 MR. MC CARTHY: Thank you, your Honor.

20 THE COURT: Just be seated one more  
21 moment.

22 (The Jury is in the Courtroom.)

23 THE COURT: All right, now unfortunately,  
24 I placed you in a room and I know you sat there  
25 for sometime, and that sometimes annoys and



Exhibit 5

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

FILED  
U.S. DISTRICT COURT, N.Y.  
JAN 30 1974

3  
4 UNITED STATES OF AMERICA,

5 -against-

6 JOE SADDLER,

7 Defendant.

INEAL  
FEL

72 CR 718

9 United States Courthouse  
10 Brooklyn, New York  
11 February 16, 1973  
12 11:30 O'clock A.M.

13 B e f o r e:

14 HONORABLE MARK A. COSTANTINO, U.S.D.J.

15  
16 (Criminal Cause for Sentence)  
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UNITED STATES  
DISTRICT COURT



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APPEARANCES:

ROBERT A. LOOSE, USC.,  
United States Attorney for the  
Eastern District of New York

BY: DONALD DE PETRIS, D.D.,  
Assistant United States Attorney.

LEGAL AID SOCIETY,

EDWARD KELLY, USC.,  
Attorney for Defendant.

. . . . .

1  
2 THE COURT: This is Saddler?

3 MR. KELLY: Yes, your Honor.

4 THE COURT: What do you have to say?

5 MR. KELLY: Your Honor, even before I met  
6 Mr. Saddler the first time this morning -- as you  
7 recall, this case was handled by David McCarthy  
8 of our office -- even before I met him and read  
9 the probation report, it was my evaluation of the  
10 defendant's background, that the Court would only  
11 be in the best position to sentence him if he were  
12 given a 4203(b) commitment.

13 I attempted --

14 THE COURT: 4203 (b) commitment?

15 MR. KELLY: Yes, a (b) commitment, your Honor.

16 This defendant has in his background, a  
17 history of attempts at suicide.

18 I have a letter from the Knickerbocker  
19 Hospital, at which Mr. Saddler was treated. They  
20 indicate that he has some very grave emotional  
21 problems that stem from his childhood. He also  
22 has the problem of drug addiction.

23 I attempted to talk to Mr. Saddler this morning  
24 to introduce myself, and he did not respond at all,  
25 and spoke in an incoherent way.



1  
2 I think the Court would be in the best position  
3 to properly impose sentence on this defendant, if it  
4 took into account of this defendant's background, his  
5 emotional problems, his narcotics addiction prior  
6 to this, and I would therefore urge for that called  
7 at this time.

8 THE COURT: I really don't agree with you.  
9 I don't think he's a candidate for 4202 (c). I think  
10 he should be given a jail sentence, and if they  
11 want to examine him in jail and send him to an  
12 institution, let them do it.

13 There are proper facilities to do so, and  
14 it's not for this Court to do so.

15 Under the circumstances of the case, I get  
16 no indication, either by his previous record or  
17 anything else, that that's what should be done with  
18 him.

19 MR. DE BEZIER: I would agree, Your Honor.  
20 And Your Honor has had an opportunity to observe  
21 Mr. Sadler for several days, during the course of  
22 the hearings.

23 THE COURT: I don't follow that at all. What  
24 has he got to say in behalf of himself? Does he  
25 have anything to say?

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Do you have anything to say? Do you have  
anything to say on behalf of yourself?

THE DEFENDANT: What it look like?

THE COURT: You want to say --

THE DEFENDANT: What it look like? I want.

THE COURT: No, this Court is ready for  
sentencing then. Not under 4208(b).

All right, the Court passes sentence on this  
defendant: 12 years, 4208(a) (2).

THE DEFENDANT: My attorney?

THE MARSHAL: Yes.

THE COURT: With a recommendation that if they  
should find he needs mental assistance, they can give  
it to him in prison.

MR. DE PETRIS: Your Honor, at this time, the  
Government would move to dismiss counts two and three  
of indictment No. 72 CR 731.

THE COURT: Those counts are dismissed.

Anything else?

.....



Exhibit 6

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
BROOKLYN, NEW YORK

JOE STEVENSON SADDLER,  
Petitioner

vs.

CIVIL ACTION

UNITED STATES OF AMERICA,  
Respondent

NOTICE TO VACATE BRIEFING

72 CR. 718

Joe Stevenson Saddler, Petitioner  
United States Penitentiary  
P.M.B. - 75854-153  
Atlanta, Georgia 30315



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN, NEW YORK  
-----X

JOE STEVENSON SADDLER,  
Petitioner

vs.

CIVIL ACTION \_\_\_\_\_

UNITED STATES OF AMERICA,  
Respondent  
-----X

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

JOE STEVENSON SADDLER, petitioner, in propria persona,  
respectfully moves this Honorable Court, pursuant to the provisions  
of 28 U.S.C. § 1915, for permission to proceed in forma pauperis,  
in the filing of the attached MOTION TO VACATE SENTENCE.

An affidavit of poverty is attached hereto.

Respectfully submitted,

*Joe Stevenson Saddler*  
Joe Stevenson Saddler, Petitioner Pro Se

SEAL OF GEORGIA)

COUNTY OF FULTON)

DECLARATION OF PETITIONER

I, Joe Stevenson Saddler, being first duly sworn according to law, depose and say that I am the petitioner in the above-entitled cause, and, in support of my application for leave to proceed without being required to prepay costs or fees, state:

1. Because of my poverty I am unable to pay the costs of said cause.
2. I am unable to give security for the same.
3. I believe that I am entitled to the redress I seek in said cause.
4. The nature of said cause is briefly stated as follows:

I was sentenced to a federal penitentiary by the United States District Court for the Eastern District of New York. The present proceeding is a 2255 collateral attack on the invalidity of the plea of guilty.

Joe Stevenson Saddler  
Joe Stevenson Saddler, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 29 DAY OF MARCH, 1974.

James K. F. Deane  
PAROLE OFFICER.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN, NEW YORK  
-----x

JOE STEVENSON SADDLER,  
Petitioner

vs.

CIVIL ACTION \_\_\_\_\_

UNITED STATES OF AMERICA,  
Respondent  
-----x

MOTION TO VACATE SENTENCE

Joe Stevenson Saddler, petitioner, in propria persona, now moves this Court, pursuant to the provision of 28 U.S.C. § 2255, to vacate sentence and set aside the judgment of commitment, and in support hereof, petitioner does aver:

- (1) That he is a federal prisoner in custody of the Attorney General, at the United States Penitentiary, Atlanta, Georgia; and
- (2) That he was sentenced to a term of twelve (12) years, under the provisions of 18 U.S.C. § 4208(a)(2), by the Honorable M. A. COSTANTINO, U.S.D.J., on February 16, 1973; and
- (3) That the plea of guilty was not voluntarily and intelligently made, and such a plea is contrary to the Constitutional Rights of Due Process of Law; and
- (4) That at the time that the plea was entered this petitioner was not capable of determining whether he was guilty of the offense for which he was pleading guilty to; and

(5) That the Court accepted the plea of guilty being fully aware that the petitioner was under severe emotional strain, and with a prior record of psychiatric problems.

WHEREFORE, for all of the above reasons this petitioner PRAYS that this Court permit him to withdraw his plea of guilty and have an Evidentiary Hearing on this matter.

Attached hereto is a Memorandum of Law, in support of this Motion to vacate sentence.

Respectfully submitted,

*Joe Stevenson Saddler*

Joe Stevenson, Saddler, Petitioner Pro Se.

STATE OF GEORGIA)  
: ss  
COUNTY OF FULTON)

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 29 DAY OF MARCH, 1974.

*James K. Fleagle*  
PAROLE OFFICER.

NOTED  
JUL 7 1974  
4000



MEMORANDUM OF LAW IN SUPPORT OF MOTION TO VACATE SENTENCE

---

Petitioner Joe Stevenson Saddler, was arrested on June 11, 1972, and charged with the violation of 18 U.S.C. § 2113, Bank Robbery, he remained in custody, and in December, 1972 proceeded with trial on the charge with appointed counsel. After the trial commenced the petitioner on December 14, 1972, pled guilty to the charge of 2113(a), and subsequently was sentenced to a term of 12 years, under the provisions of 18 U.S.C. § 4208(a)(2).

At the plea proceedings this petitioner also withdrew some allegations that he had against the arresting agents, and the colloquy that was had at the time the Court accepted the plea obviated the fact that the petitioner was under serious mental and emotional problems, so much so that his appointed counsel requested, and was granted by the Court a commitment under the evaluation provisions of 4244. This, of course, transpired after the petitioner had withdrawn his plea of not guilty and plead guilty.

The proper procedure under Rule 11, Federal Rules of Criminal Procedure, would, of course for the Court to have committed for a competency hearing prior to the acceptance of the plea, and not after the petitioner had violated his fifth amendment right, and testified against himself. The higher Courts have held that it becomes the duty of the Court to conduct a hearing sua sponte when it is aware that a defendant might be suffering from the withdrawal symptoms of his prior drug addiction, or might have had prior psychiatric problems, see: Hansford vs. United States (1966), 365 F. 2d 920; Dusky vs. United States, (1960), 362 U.S. 402, 4 L. Ed. 2d 824.

There is no longer any question of the availability of Section 2255 to raise the question of narcotic induced incompetency-- see; Floyd vs. United States, (CA5, 1966) 365 F. 2d 360, and cases cited therein.

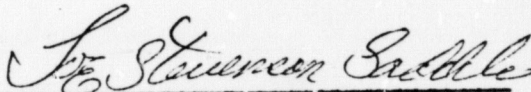
Procedures to follow in accepting guilty pleas were lacking until the Supreme Court of the United States, acting under it's rule-making power, promulgated Rule 11, of the Federal Rules of Criminal procedure. Subsequently, the Court established the all but constitutional significance of Rule 11, in McCarthy vs. United States, 394 U.S. 459 (1969), In McCarthy, the Court held that if the District Court failed to comply with Rule 11, the defendant's plea of guilty must be set aside and the case remanded for another hearing. Rule 11 is designed to eliminate any need to resort to a subsequent fact-finding proceeding after a plea of guilty is accepted. Heiden vs. United States, 353 F. 2d 53 (9th Cir. 1965); also Dukes vs. Warden, Connecticut State Prison, 406 U.S. 250 (1972).

The critical and peculiar nature of a plea of guilty has long been recognized. A plea of guilty differs in purpose and effect from a mere admission or an extra-judicial confession; it is in itself a conviction. More is not required, the court has nothing to do but give judgment and sentence. Since the plea operates as a conviction it's validity must be as firmly grounded as any conviction. In Machibroda vs. United States, 368 U.S. 487 (1962), the petitioner, under the so-called federal habeas corpus provision (28 U.S.C § 2255), moved to set aside and vacate sentence he was serving because his plea of guilty was not voluntarily entered. In spite of the government's



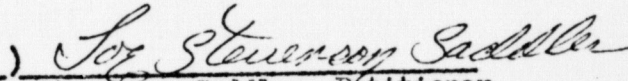
contentions that the petitioners allegations were improbable and unbelievable, the Court ordered a hearing, largely because of the gravity of the petitioner's claims.

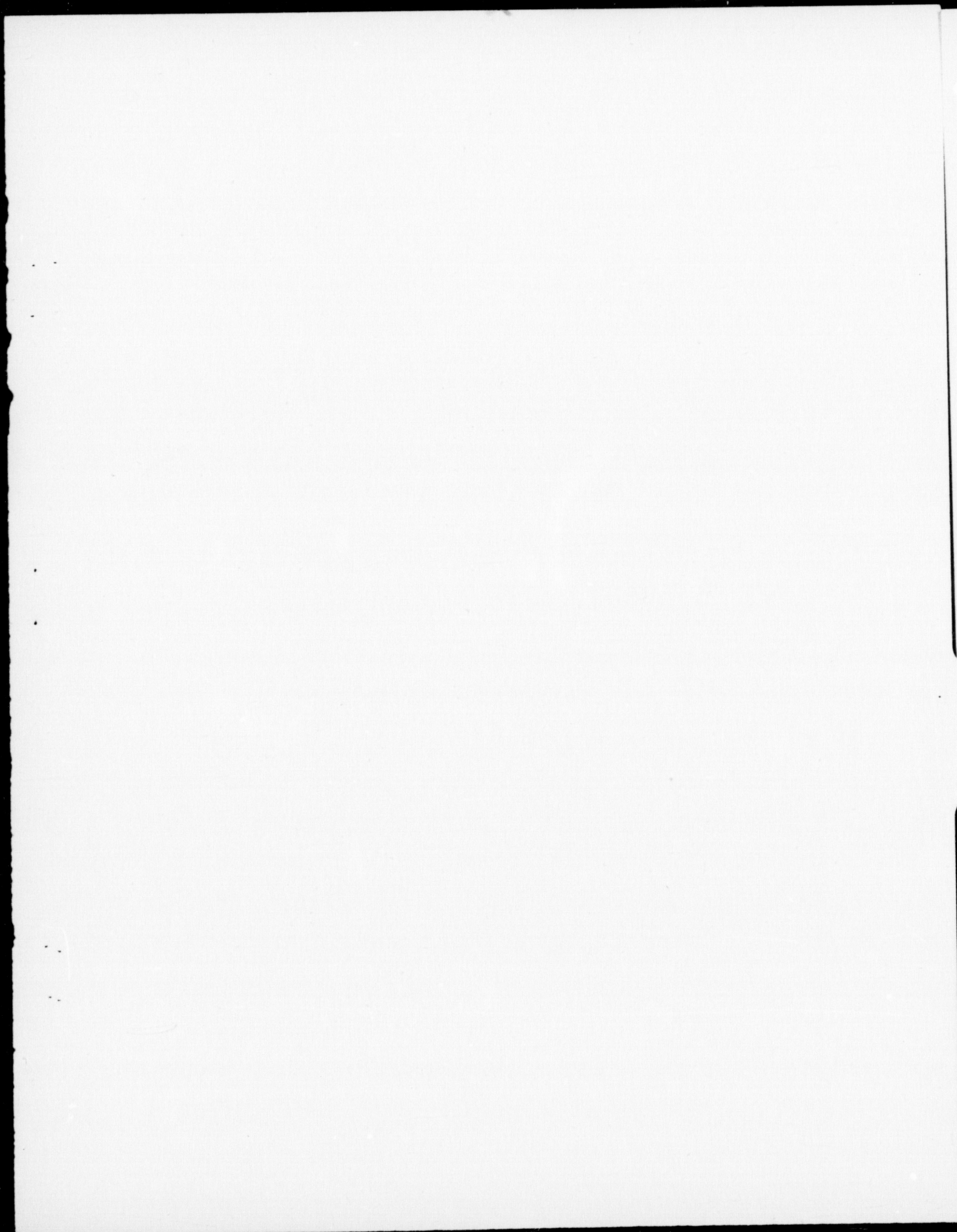
Petitioner states that this Court must O R D E R an Evidentiary Hearing, with the petitioner present so that this Manifest Injustice may be forthwith corrected.

  
Joe Stevenson Saddler, Petitioner

CERTIFICATE OF SERVICE BY MAIL

JOE STEVENSON SADDLER, hereby certifies that he is the petitioner in the attached motion to vacate sentence and that he mailed a copy of the motion to the office of the UNITED STATES ATTORNEY, for the Eastern District of New York, Brooklyn, New York, by certified mail on this the 29 day of March, 1974.

  
Joe Stevenson Saddler, Petitioner





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - -x

JOE STEVENSON SADDLER,

PETITIONER,

74 C 524

- against -

MEMORANDUM IN SUPPORT  
OF PETITION

UNITED STATES OF AMERICA,

RESPONDENT.

- - - - -x

STATE OF NEW YORK )

: SS.:

COUNTY OF NEW YORK)

DAVID BLACKSTONE, being duly sworn, deposes and says:

1. I am the attorney for the petitioner, Joe Stevenson Saddler, having been assigned to represent him by this court under the Criminal Justice Act and submit this memorandum in support of the petitioner's pro se motion pursuant to 28 U.S.C. Sec. 2255 to vacate the judgment of conviction and to plead anew.

As shall be detailed below this relief should be granted because the district judge (Costantino J) did not, at the time petitioner pleaded guilty to bank robbery [Title 18 Sec. 2113A] on December 14, 1972, address him personally and determine that his plea was made voluntarily with understanding of the nature of the charge and the consequence of the plea as required by Rule 11

FRCP. Specifically, the petitioner's mental capacity to proceed was interposed at the plea hearing when on motion of petitioner's counsel, the court ordered a competency examination pursuant to Title 18 U.S.C. Sec. 4244, an examination which was never conducted. Thus the court had no basis to determine and did not determine whether the petitioner was competent to plead. By virtue of this defect the court must vacate the judgment of conviction and allow the petitioner to plead anew. *McCarthy v. United States*, 394 U.S. 459 (1969)

2. On December 14, 1972, after a jury had been selected to hear the case of *United States of America v. Joe Stevenson Sadler, et al.*, 72 Cr. 713, a bank robbery prosecution, David McCarthy of the Legal Aid Society, petitioner's assigned counsel, announced to the court his client's desire to plead guilty. (Xerox copy of the plea minutes are annexed hereto as Exhibit A) The court proceeded through the allocution and immediately following its acceptance, Mr. McCarthy first advised the court of the need for a competency examination:

"One further thing: In aid of sentence, your honor, I would request, and in view of the nature of the charge, the defendant's drug background, I would ask your honor consider providing for a 4244 examination, your honor."

(390)



In response to this the court stated:

"I have no objection to it. It's one of the reasons why we have the section, so I will permit it."

(390)

The court thereupon directed defense counsel to prepare the order. (390)

Inexplicably, counsel did not prepare the order and no examination was conducted. On February 16, 1973, the date of petitioner's sentence, Edward Kelly of the Legal Aid Society, appeared for the petitioner. (Xerox copy of the sentencing minutes are attached hereto as Exhibit B.) Mr. Kelly's threshold application was for a study and commitment pursuant to Title 18 U.S.C. 4208(b).(3) In support of this application Mr. Kelly told the court that:

"... I attempted to talk to Mr. Saddler this morning to introduce myself, and he did not respond at all, and spoke in an incoherent way."

(3)

Additionally, Mr. Kelly noted that he had a letter from a hospital which treated the petitioner and which described his psychiatric problems. (3)

The court denied counsel's application for a study and imposed a 12 year sentence. (5)

3. It is fundamental that no part of a plea or trial may be had against a defendant who is at the time mentally incompetent as to be unable to understand the proceedings against him or properly assist in his defense. 18 U.S.C. Sec. 4244; *Dusky v. United States*, 362 U.S. 402 (1960); *Pate v. Robinson*, 383 U.S. 375 (1966); *United States v. Malcolm*, 432 F2d 899 (2nd Cir. 1970). As noted in *Malcolm*, "a plea in such circumstances is not a knowing, free and rational choice of the alternatives open to an accused and cannot be an intelligent waiver of constitutional rights." at 812. See also, *United States ex rel. Fitzgerald v. La Vallee*, 461 F2d 601 (2nd Cir. 1972), Cert. Den. 409 U.S. 885; *United States ex rel. Curtis v. Zelker*, 466 F2d 1092 (2nd Cir. 1972), Cert. Den. 410 U.S. 945; *United States ex rel. Roth v. Zelker*, 455 F2d 1105 (2nd Cir. 1972)

On the record here the court was informed by defense counsel immediately following its acceptance of the plea of the possible mental incompetence of his client. However belated the application, the court granted counsel's request for the examination and did so without seeking counsel's grounds with any greater particularity than had been given. Nor did the court address the client to determine whether counsel's application was reasonably grounded or address him to determine whether to rescind its



acceptance of the plea. Inexplicably, the order for an examination was not submitted to the court and the examination, which would have clarified the petitioner's status was not given. On the sentence date, Mr. Kelly, who admittedly had interviewed the petitioner for the first time that morning, advised the court of the petitioner's "incoherence." Although Mr. Kelly did not apply for a 4244 examination, as he should have if he had reasonable grounds to believe his client was incompetent for sentence, the message was clear - petitioner's competence was in serious question and the court should have then ordered an examination *sui sponti*. *Pate v. Robinson, supra*.

4. In *McCarthy v. United States, supra*, the Supreme Court held that a defendant is entitled to plead anew if the district court fails to comply with Rule 11. This is a per se rule "designed to eliminate any need to resort to a later fact finding proceeding in this very subjective area."

Thus in the instant case, since the district court failed to address the defendant and determine his competence to proceed with a guilty plea, no fact finding hearing is necessary to determine whether he was then competent to plead since there was a failure to comply with Rule 11.<sup>1</sup>

<sup>1</sup> The court should not conduct such a fact finding hearing for the additional reason that it is so difficult for a court to make such retrospective determinations of an accused's competence to stand trial. *Pate v. Robinson, supra*, *Dusky v. United States, supra*. In *Fontaine v. United States*, 411 U.S. 213 (1973) the court required such a retrospective determination, but there Rule 11 non compliance was not contended.

Wherefore, it is respectfully requested that the relief sought herein be granted in all respects.

DAVID BLANKSTON

Sworn to before me this  
18th day of June, 1974.

---

Copies to: United States Attorney  
Eastern District of New York  
Joe Stevenson Saddler



Exhibit 8

EEB:AAS:sj  
F# 740,413

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

JOE STEVENSON SADDLER,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

----- X

NOTICE OF MOTION

74 C 524

S I R S :

PLEASE TAKE NOTICE that upon the annexed Affidavit of ALVIN A. SCHALL, duly sworn to the 5th day of August 1974, a motion will be made before the Honorable Mark A. Costantino, at 10:00 A.M. on the <sup>10</sup>th day of <sup>September</sup> ~~August~~ 1974 or as soon thereafter as counsel may be heard, at the Federal Courthouse, 225 Cadman Plaza East, Brooklyn, New York, for an order directing that the Board of Examiners at the Federal Penitentiary in Atlanta, Georgia, where petitioner is presently incarcerated, examine petitioner pursuant to Title 18, United States Code, Section 4241 to determine the following:

1. the petitioner's present mental condition and competency;

2. the petitioner's mental condition and competency at the time of his sentencing on February 16, 1973, his plea of guilty to a violation of Title 18, United States Code, Section 2113(a); and

3. the petitioner's mental condition and competency at the time of his plea of guilty on December 11, 1973.



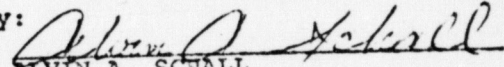
1972 to a violation of Title 18, United States Code, Section 2113(a).

Dated: Brooklyn, New York  
August 5, 1974

Yours very truly,

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York  
Attorney for Respondent  
225 Cadman Plaza East  
Brooklyn, New York 11201

By:

  
KEVIN A. SCHALL  
Assistant U.S. Attorney

TO: Joe Stevenson Saddler  
Federal Penitentiary  
P.M.B. - 75854 - 158  
Atlanta, Georgia 30315

David Blackstone, Esq.  
335 Broadway  
New York, New York 10013

EJB:AAS:sj  
F# 740,413

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

JOE STEVENSON SADDLER,

AFFIDAVIT

Petitioner,

74 C 524

- against -

UNITED STATES OF AMERICA,

Respondent.

----- X

STATE OF NEW YORK)

) SS:

COUNTY OF KINGS )

ALVIN A. SCHALL, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney on  
the staff of DAVID G. TRAGER, United States Attorney for the  
Eastern District of New York, duly appointed according to  
law and acting as such, and I am familiar with the facts of  
the above-captioned case.

2. This affidavit is filed in connection with  
the Government's opposition to the motion by petitioner  
JOE STEVENSON SADDLER, pursuant to Title 28, United States  
Code, Section 2255, to vacate his judgment of conviction  
and to be permitted to plead anew.

3. Petitioner is presently incarcerated in the  
Federal Penitentiary in Atlanta, Georgia following his con-  
viction, dated February 16, 1973, for bank robbery in viola-  
tion of Title 18, United States Code, Section 2113(a).

4. Petitioner was arrested on June 10, 1972 in  
connection with the armed robbery, on June 7, 1972, of a



branch of Manufacturers Hanover Trust Company located at 84 Broadway, Brooklyn, New York. On June 20, 1972, a three count indictment was filed in the Eastern District of New York (72 CR 718) charging petitioner and three co-defendants with conspiracy (Title 18, United States Code, Section 371) and substantive violations of Title 18, United States Code, Sections 2113(a) and 2113(d), arising out of the aforementioned robbery. Petitioner initially pleaded not guilty. However, on December 14, 1972, after a jury had been selected and suppression hearings had been held, petitioner withdrew his plea of not guilty and was permitted to plead guilty to Count ONE of the indictment (Title 18, United States Code, Section 2113(a)). This plea was accepted, and on February 16, 1973 Judge Costantino sentenced petitioner to the custody of the Attorney General for 12 years, under Title 18, United States Code, Section 4208(a)(2).

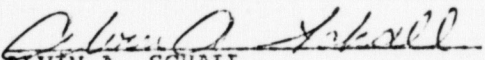
5. In moving to vacate his judgment of conviction, petitioner claims that Judge Costantino failed to comply with Rule 11 of the Federal Rules of Criminal Procedure, alleging in particular that the question of petitioner's mental competency was raised at the time of his plea and that the plea should not have been accepted without a determination that petitioner was competent to plead.

6. Petitioner's allegations of incompetency at the time he pled guilty are being made well over a year after his judgment of conviction and are unsupported by any factual material.

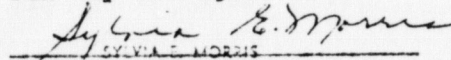
7. Nevertheless, petitioner has raised the issue of his mental condition and competency at the time he pled guilty on December 14, 1972. It is therefore appropriate that there be a determination, to the extent possible, of his mental condition and competency on that date. Also relevant is petitioner's present mental condition and competency and his mental condition and competency on February 16, 1973, the date he was sentenced upon his plea of guilty by Judge Costantino.

WHEREFORE, it is respectfully requested that (i) this Court issue an order, in the form annexed hereto as Exhibit A, directing the Board of Examiners at the Federal Penitentiary in Atlanta, Georgia to examine the petitioner pursuant to Title 18, United States Code, Section 4241 and that (ii) consideration of petitioner's motion be stayed pending such examination.

Dated: Brooklyn, New York  
August 5, 1974

  
ALVIN A. SCHALL  
Assistant U.S. Attorney

Sworn to before me this  
5th day of August 1974

  
SYLVIA E. MORRIS  
Notary Public, State of New York  
No. 244503861  
Qualified in Kings County  
Commission Expires March 30, 1975

TO: Joe Stevenson Saddler  
Federal Penitentiary  
P.M.B. - 75854-158  
Atlanta, Georgia 30315

David Blackstone, Esq.  
335 Broadway  
New York, New York 10013



EXHIBIT A

EJB:AAS:sj  
F# 740,413

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

JOE STEVENSON SADDLER,

Petitioner,

ORDER

- against -

74 C 524

UNITED STATES OF AMERICA,

Respondent.

- - - - - X

The petitioner JOE STEVENSON SADDLER having appeared before this Court through his attorney, David Blackstone, Esq., and the respondent United States of America having appeared through DAVID G. TRAGER, United States Attorney for the Eastern District of New York, Alvin A. Schall, of Counsel, and an application having been made to this Court by the respondent, through its attorney, for an order directing the Board of Examiners at the Federal Penitentiary in Atlanta, Georgia, to examine the petitioner JOE STEVENSON SADDLER pursuant to Title 18, United States Code, Section 4241 to determine (i) the said petitioner's mental condition and competency; (ii) the said petitioner's mental condition and competency at the time of his sentencing on February 16, 1973 upon his plea of guilty to a violation of Title 18, United States Code, Section 2113(a), and (iii) the said petitioner's mental condition and competency at the time of his plea of guilty on December 14, 1972 to a violation of Title 18, United States Code, Section 2113(a), and upon all proceedings had and the papers filed herein, it is hereby



ORDERED, that the petitioner JOE STEVENSON SADDLER, who is presently incarcerated at the Federal Penitentiary in Atlanta, Georgia, be examined by the Board of Examiners at said Federal Penitentiary pursuant to Title 18, United States Code, Section 4241 to determine the following:

(i) said petitioner's present mental condition and competency;

(ii) said petitioner's mental condition and competency at the time of his sentencing on February 16, 1973 upon his plea of guilty to a violation of Title 18, United States Code, Section 2113(a); and

(iii) the said petitioner's mental condition and competency at the time of his plea of guilty on December 14, 1972 to a violation of Title 18, United States Code, Section 2113(a); and it is further

ORDERED, that said Board of Examiners shall, upon completion of said examination, submit a written report of the results thereof to this Court within 20 days.

Dated: Brooklyn, New York  
          , 1974

SO ORDERED:

UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

JOE STEVENSON SADDLER,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

-----x

STATE OF NEW YORK )

: SS.:

COUNTY OF NEW YORK)

DAVID BLACKSTONE, being duly sworn, deposes and states:

1. I am the attorney for the petitioner, Joe Stevenson Saddler, and submit this affidavit in opposition to the government's motion of August 4, 1974, for an order directing the Board of Examiners at the Federal Penitentiary in Atlanta, Georgia, where petitioner is presently incarcerated, to conduct an examination of the petitioner to determine his present mental condition, and his mental condition and competence at the time of his plea on December 14, 1972, and his sentence on February 13, 1973.

2. In support of petitioner's pro se petition, a memorandum was filed by this attorney on June 18, 1974. The thrust of my argument in that brief was that the court failed to comply with Rule 11 of the Federal Rules of Criminal Procedure when it accepted Mr. Saddler's guilty plea on December 14, 1972,<sup>1</sup> and that such

<sup>1</sup> The Rule 11 defect arose when the court failed to determine the mental capacity of the defendant to plead after being advised by defense counsel on the pleading date of the possible incompetence of the defendant. This point is more fully developed in counsel's memorandum of law.

infirmity requires this court, pursuant to the rule established in *McCarthy v. United States*, 394 U.S. 459 (1969) to vacate the conviction and allow the petitioner to plead anew. As noted in counsel's memorandum at page 5, the *McCarthy* decision stands for the proposition that Rule 11 non compliance is prejudicial per se and that no fact finding hearing may be held seeking to go behind the defect so to determine whether there was harmless error.

3. Thus, the government's motion seeks to accomplish what the Supreme Court in *McCarthy* expressly forbids: i.e., a hearing to determine retrospectively whether the petitioner was competent at the time of his defective plea and, presumably, a determination of harmless error in the event a finding of competence is made.

Wherefore, it is respectfully requested that the government's motion be denied on the ground that it is not responsive to the issue raised by counsel's memorandum of law on behalf of the petitioner.

---

DAVID BLACKSTONE

Sworn to before me this  
12th day of August, 1974.

---

Copies to: Alvin A. Schall  
Assistant United States Attorney  
Joe Stevenson Saddler





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
JOE STEVENSON SADDLER,

Petitioner

NO: 74 C 524

vs.

AFFIDAVIT IN OPPOSITION

UNITED STATES OF AMERICA,

Respondent'

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ AUG 22 1974 ★

STATE OF GEORGIA)

: ss

COUNTY OF FULTON)

TIME A.M. ....  
P.M. ....

JOE STEVENSON SADDLER, who, after first being duly sworn,  
according to law, on oath deposes and says:

1. That he is represented in this cause of action by  
DAVID BLACKSTONE, Esq., and submits this affidavit in opposition  
to the affidavit filed by ALVIN A SCHALL, Assistant United States  
Attorney.

2. That the affiant concedes to the statemens made in  
the affidavit of the Assistant United States Attorney in regard to  
statements (1), (2), (3) and 4, to the extent that the information  
is taken from the records and files of the case.

3. That statement 5, in the affidavit of the Assistant  
United States Attorney is materially untrue, in that the Judge did  
NOT comply with Rule 11, as established in the Memorandum in Support  
of petition filed by affiant's attorney, on the 18th day of June,  
1974. Further that the Court, at the plea hearing did order a com-  
petency examination and the examination was never conducted, there-  
fore, there was no basis for the court to accept the plea.

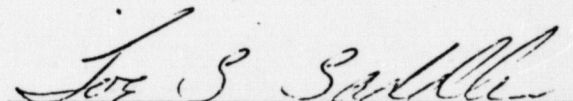
(6)



4. That the issue raised in staement 6, of the Affidavit of the Assistant United States Attorney is frivolous, and a constitutional denial can be corrected through a Section 2255 Motion at anytime during the service of the sentence, see Title 28, United States Code, Section 2255. The records and the files of the case conclusively support the affiant's allegation, and no further, or prima facia fectual material should be required.

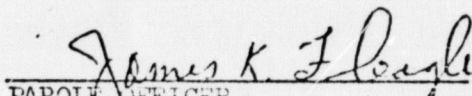
5. That statement 7, of the Affidavit, is meritless, frivolous, and contrary to due process of law. No determination could possibly be made at this Institution, at this date, as to the competency of affiant on December 14, 1972, and none is needed as the non-compliance with Rule 11, demands an Evidentiary Hearing.

WHEREFORE, it is respectfully requested that this Court ignore the request in Affiadvit Form filed by ALVIN A. SCHALL, Assistant United States Attorney, and immediately grant an Evidentiary Hearing as required by the records and files of this cause.

  
JOE STEVENSON SADDLER, AFFIANT  
United States Penitentiary  
P.M.B. - 75854-158  
Atlanta, Georgia 30315

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 16 DAY OF AUGUST, 1974, 7:15 PM to 7:30 PM (S.B.S.G. 4004).

  
PAROLE OFFICER.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

JOE STEVENSON SADDLER,

Petitioner

NO: 74 C 524

vs.

MEMORANDUM IN SUPPORT OF AFFIDAVIT IN  
OPPOSITION

UNITED STATES OF AMERICA,

Respondent

-----x

Petitioner files the attached affidavit in opposition to the affidavit and request for an ORDER of commitment, and stay of hearing on the instant cause.

The Assistant United States Attorney is well aware, from the files and records of this cause that the petitioner is entitled to an Evidentiary Hearing, and that the Court has, and did, violate the petitioner's rights, and the Court's MANDATORY obligation, to comply with Rule 11, Federal Rules of Criminal Procedure, Title 18. The only remedy at this point is the relief of an Evidentiary Hearing.

In Hansford vs. United States, (1966) 365 F. 2d 920, 922, 926, the Court said:

"the only appropriate relief for this constitutional violation is a new trial. A retrospective determination of competency is difficult at it's best. It is virtually impossible where, as here, there is no contemporaneous testimony or evidence of appellant's competence at the time of trial....." (emphasis added).

In the United States vs. Concern, 278 F. 2d D.C. 1972 Supp. 248; defendant has the right to all witnesses of lay nature to ascertain his mental stability over a period of years, which is impossible for a Psychiatrist to determine such a diagnosis.




In United Staes vs. Leyy, D.C. Fla, 1964, 232 F. 66 Supp.

it was held that the defense of insanity at the time of the crime, which is a plea following not guilty defense, is an Affirmative Defense, and that is a jury question. Then the burden of proof is on the government to show defendant was not incompetent.

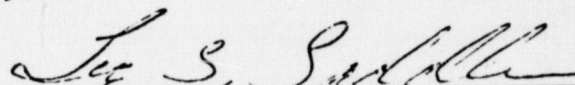
In Higgins vs. McGrath, D. C. No. 1951, 98 Supp 670, it was held that the finding of competency to stand trial (now) does not preclude defense of insanity at the time of the crime.

WHEREFORE, the defendant/petitioner PRAYS for an Evidentiary Hearing in this matter on a date certain, so that he may bring witnesses for his defense, and gain the relief sought.

  
JOE STEVENSON SADDLER, PETITIONER

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that I am the petitioner, and affiant in the attached affidavit and memorandum, and that I mailed a copy of these papers to ALVIN A. SCHALL, Assistant United States Attorney, Eastern District of New York, U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201, by depositing them in the United States Mails, and mailing them CERTIFIED MAIL-RETURN RECEIPT REQUESTED on this the 16th day of August, 1974.

  
Joe Stevenson Saddler, Petitioner





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

JOE STEVENSON SADDLER,

74 C 524

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

----- X

GOVERNMENT'S MEMORANDUM OF LAW  
IN OPPOSITION TO PETITIONER'S  
MOTION TO VACATE SENTENCE

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Alvin A. Schall  
Assistant U.S. Attorney  
(Of Counsel)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

JOE STEVENSON SADDLER,

74 C 524

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

----- X

PRELIMINARY STATEMENT

Joe Stevenson Saddler moves pro se, pursuant to Title 28, United States Code, Section 2255, to vacate his judgment of conviction and to be permitted to plead anew.

Petitioner is presently incarcerated in the Federal Penitentiary in Atlanta, Georgia, following his conviction, dated February 16, 1973, for bank robbery in violation of Title 18, United States Code, Section 2113(a).

This memorandum of law is submitted in opposition to the petitioner's motion.



STATEMENT OF THE CASE

Petitioner was arrested on June 10, 1972 in connection with the armed robbery, on June 7, 1972, of a branch of Manufacturers Hanover Trust Company located at 84 Broadway, Brooklyn, New York. On June 20, 1972 a three count indictment was filed in the Eastern District of New York (72CR718) charging petitioner and three co-defendants with conspiracy (Title 18, United States Code, Section 371) and substantive violations of Title 18, United States Code, Sections 2113(a) and 2113(d), arising out of the aforementioned robbery. Petitioner initially pleaded not guilty. However, on December 14, 1972, after a jury had been selected and suppression hearings had been held, petitioner withdrew his plea of not guilty and was permitted to plead guilty to Count One of the indictment (T. 18, U.S.C., §2113(a)). This plea was accepted, and on February 16, 1973 Judge Costantino sentenced petitioner to the custody of the Attorney General for 12 years, under Title 18, United States Code, Section 4208(a)(2).

Petitioner now moves pro se to vacate his judgment of conviction and to be permitted to plead anew.

ARGUMENTPETITIONER'S MOTION  
SHOULD BE DENIED

Petitioner claims that the relief he seeks should be granted because Judge Costantino did not, at the time he accepted the guilty plea, address petitioner personally and determine that his plea was made voluntarily with understanding of the nature of the charge, as required by Rule 11 of the Federal Rules of Criminal Procedure. Specifically, it is alleged that the question of petitioner's mental competency was raised at the time of the plea and that the plea should not have been accepted without a determination that petitioner was competent to plead.

Rule 11 of the Federal Rules of Criminal Procedure, which governs pleas, provides in relevant part as follows:

"A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea...The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea."



The finding that a judge must make before accepting a plea of guilty is thus twofold: by personally addressing the defendant he must determine that the plea is being voluntarily made and that the defendant understands the nature of the charge to which he is pleading guilty and the consequences resulting from the plea which he is making. In addition, before entering a judgment of conviction, the judge must be satisfied that there exists a factual basis for the plea of guilty. In McCarthy v. United States, 394 U.S. 459 (1969), the Supreme Court held that if the trial court accepts a defendant's guilty plea without fully adhering to the procedure set forth in Rule 11, the defendant is entitled to plead anew. In the McCarthy decision the Court noted, however, that the Rule 11 inquiry "must necessarily vary from case to case" and that it was not establishing "any general guidelines other than those expressed in the Rule itself." McCarthy v. United States, supra, n. 20 at pages 467-468. Clearly, what is important with respect to Rule 11 is that instead of the court following an exact ritual there be "substantial compliance" with the Rule. Sappington v. United States, 468 F.2d 1378 (8th Cir., 1972), cert. denied, 411 U.S. 970 (1973).

The record in the instant case shows that petitioner's plea of guilty on December 14, 1972 was accepted in

full compliance with the requirements of Rule 11.\* Upon being advised that petitioner wished to withdraw his plea of not guilty, Judge Costantino at once personally addressed him. After carefully advising petitioner of his right to consult with counsel and his right to a jury trial, the Judge specifically asked petitioner if he was making the plea voluntarily and of his own free will. Petitioner replied in the affirmative. See Appendix A, page 383. The Judge then established, through questioning of petitioner (Appendix A, pages 383-385), what role petitioner had played in the bank robbery, following which the Judge explained to petitioner the maximum penalty which he could receive and that the Court was making "absolutely no promise" as to the sentence which would be given. See Appendix A, pages 384-385. An examination of the record shows that petitioner stated that he understood what he was being told and, further, compels the conclusion that he was acting voluntarily with an understanding of the nature of the charge against him and the consequences of

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\* Annexed hereto as Appendix A is a copy of that portion of the trial transcript which covers the taking of petitioner's plea.



his plea.\*

In support of his motion petitioner contends that his mental competency became an issue at the time he changed his plea and that no determination was made that he was, in fact, competent to plead guilty. This contention is based on remarks made by Mr. David McCarthy, petitioner's counsel, after petitioner's guilty plea had been accepted:

"MR. MCCARTHY: Thank you,  
Judge.

One further thing: In aid of sentence, your Honor, I would request, and in view of the nature of the charge, the defendant's drug background, I would ask that your Honor consider providing for a 4244 examination, your Honor.

"THE COURT: Yes, a narcotic appraisal, -

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\* Although Judge Costantino did not, when addressing petitioner, specifically explain to him the nature of the charge to which he was pleading, it defies logic and common sense to argue that petitioner did not in fact understand the offense with which he was charged. In the first place, when asked to explain his criminal conduct, he admitted to acts clearly prohibited by Title 21, United States Code, Section 2113(a). In addition, as noted above, the guilty plea was offered after a jury had been selected and suppression hearings held, during all of which petitioner was present, thus affording him further opportunity to acquaint himself with the charges against him.

"MR. MCCARTHY: Both narcotic and psychiatric, just so that we can have a very clear record when the defendant is sentenced and I also think it would be in aid of the sentencing procedure." Appendix A, pages 389-390.

The Judge properly did not make any order following Mr. McCarthy's statement but indicated that he would act upon submission of the appropriate papers by counsel. See Appendix A, page 390. No such papers were ever submitted, however.

It is incorrect to contend that petitioner's mental competency was "interposed" at the plea hearing as is argued on behalf of petitioner. Counsel's remarks were expressly directed towards sentencing and not the taking of the plea; moreover, reference was made to petitioner's drug and psychiatric "background" rather than any condition, mental or physical, alleged to exist at that time. At no time did counsel state or imply that petitioner was incompetent to plead. Furthermore, there is nothing in the record of the pleading proceedings to indicate that petitioner was not mentally competent or did not fully understand what he was doing. In addition, it is to be noted that Judge Costantino was in a position to make a determination as to petitioner's mental competency. He had observed petitioner during the taking of the plea and also in the course of suppression hearings, where petitioner testified



in a coherent and understandable fashion, both on direct and cross examination.\* There is clearly nothing in the record of the proceedings before Judge Costantino to support the claim that on December 14, 1972 petitioner was not competent to plead guilty in accordance with the requirements of Rule 11. On the contrary, petitioner appears to have acted intelligently and with a full understanding of what was going on. Judge Costantino was not required to hold a hearing to determine petitioner's competency because no "reasonable grounds" were presented for believing that petitioner was incompetent. United States ex rel Roth v. Zelker, 455 F.2d 1105, 1108 and n. 2 (2nd Cir.), cert. denied, 408 U.S. 927 (1972), United States v. Vowter, --F.2d-- (2nd Cir.), July 18, 1974, slip op. page 4873, at page 4876.

Based on the foregoing, the conclusion is inescapable that petitioner's allegations of mental and drug related incompetency at the time he pleaded guilty are nothing more than bald assertions made, it is to be noted, well over a year after his judgment of conviction, and that these assertions find no basis in the record and are unsupported by any other factual material.

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\* This testimony is annexed hereto as Appendix B.

In support of the motion it is argued on behalf of the petitioner that his conduct at the time of sentencing required the Court to order an examination under Title 18, United States Code, Section 4244, sua sponte.\* At the time of sentencing Edward Kelly of the Legal Aid Society, petitioner's counsel, stated that he was unable to communicate with petitioner and that he had in his possession a letter from a hospital dealing with petitioner's mental problems. When asked by Judge Costantino if he had anything to say in his behalf, petitioner responded unresponsively. Judge Costantino then pronounced sentence, specifically stating that it was not his view that petitioner was a candidate for commitment for mental study. Appendix C, page 4.

The Court was well within its discretion in refusing to order petitioner committed for study, based on its prior observations of the petitioner and the failure of the probation report to detail or set forth any present mental problems.\*\*

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\* The sentencing proceedings are annexed hereto as Appendix C.

\*\* The probation report did state, however, that the defendant claimed he had been psychiatrically treated at both Harlem and Bellevue Hospitals in New York City.

The genuineness of petitioner's incoherence at the time of sentencing must seriously be questioned, in view of the coherent and rational letter he wrote to Judge Costantino just over a month later requesting a reduction of his sentence. This letter is annexed hereto as Appendix D.



CONCLUSION

Petitioner's motion should be denied.

Dated: Brooklyn, New York  
September 25, 1974

Respectfully submitted,

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Alvin A. Schall  
Assistant U. S. Attorney  
(Of Counsel)

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

Index No.

JOE STEVENSON SADDLER

Plaintiff

against

UNITED STATES OF AMERICA

Defendant

AFFIDAVIT OF SERVICE  
BY MAIL

STATE OF NEW YORK, COUNTY OF New York

SS.:

*The undersigned being duly sworn, deposes and says:*

*Deponent is not a party to the action, is over 18 years of age and resides at  
610 West 143rd Street New York, New York*

*That on November 17 19 75 deponent served the annexed*

APPENDIX

on United States Attorney's Office

attorney(s) for Respondent

in this action at 225 Cadman Plaza East Brooklyn, New York 11201

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed  
in a postpaid properly addressed wrapper, in ~~a post office~~—official depository under the exclusive care  
and custody of the United States Postal Service within the State of New York.

Sworn to before me this 17th  
day of November, 1975.

*Denise Tinsley*  
The name signed must be printed beneath

DENISE TINSLEY

*Philip Castellano Jr.*

PHILIP CASTELLANO JR.  
NOTARY PUBLIC, State of New York  
No. 30-4504329  
Qualified in Nassau County  
Cert. filed in New York County  
Commission Expires March 30, 1977